



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I**

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BOSTON, MASSACHUSETTS 02109-3912**

September 5, 2012

Peter LaFlamme, Director
Watershed Management Division
Vermont Department of Environmental Conservation
103 South Main St, 10 North
Waterbury, VT 05671

Re: Satisfactory Progress Determination for FY11

Dear Mr. LaFlamme:

This letter is to inform you that EPA has made a favorable determination regarding Satisfactory Progress of your Nonpoint Source (NPS) Program. Under Section 319 (h)(8) of the Clean Water Act, EPA is required to make an annual determination of satisfactory progress in the implementation of your program. We have determined that your program made satisfactory progress during Federal Fiscal Year 2011. We evaluated your progress using the checklist published this year by EPA HQ on February 24, 2012. We are enclosing a copy of the checklist generated for your program. If you have any questions, please contact Eric Perkins, your EPA NPS coordinator, at 617-918-1602.

Please keep in mind that we expect an updated version of the Satisfactory Progress checklist for FY12.

We would like to thank you and your NPS coordinator, Rick Hopkins, for your ongoing work on this program.

Sincerely,

A handwritten signature in blue ink that reads "Johanna M. Hunter". The signature is written in a cursive style and is positioned above the printed name.

Johanna M. Hunter
Chief, Watersheds and Nonpoint Source Unit

Enclosure

cc: Rick Hopkins, VTDEC

Evaluation of Satisfactory Progress in Vermont 319 Program Review of FY11 Progress

Based on Interim February 2012 Checklist for Determining Progress of State Nonpoint Source Management Programs

Prepared by Eric Perkins, EPA Region 1
September 5, 2012

Meeting Statutory and Regulatory Requirements and Demonstrating Water Quality Results

1. Section 319(h)(8) requires EPA to determine if a state has made satisfactory progress in meeting a schedule of milestones to implement its NPS management program.

- a) Has the state updated its NPS Management Program with up-to-date trackable performance milestones and/or has the state established up-to-date trackable performance milestones for reducing NPS pollution as a result of an ongoing continuous planning process?

Vermont has not updated its NPS Management Program since 1999 and hence much of the information, including milestones, is outdated. EPA Region 1 supplements the NPS Management Plan by working with the state to establish annual Priorities and Commitments (P&C) for Vermont's 319 program through the Performance Partnership Agreement (PPA) process. These commitments include trackable performance measures. In addition, the state has established up-to-date trackable performance goals for the biggest NPS issue facing the state – phosphorus runoff to Lake Champlain -- and is working to improve/expand these milestones.

Also note that EPA Region 1 has requested that all 6 New England states update their state management programs in FY13 and FY14 through its draft FY13 Priorities and Commitments List.

- b) In what document(s) is this schedule located? States that include 319 grants in PPGs should also consider any Priorities and Commitments associated with the State's NPS management program.

As noted, the schedule expressed in the current NPS management plan is out of date. However, the annual workplan and P&C list itemizes activities to be conducted under the state's NPS program. The NPS phosphorus reduction goals for Lake Champlain are located in Vermont's Lake Champlain TMDL implementation plan, revised in 2010.

- c) Has the State reported its progress in meeting the schedule of milestones? In what document is this progress reported (annual report, other—specify)?

Progress in achieving FY11 P&C actions is summarized in the state's PPA year-end report for FY11. The state reported progress on meeting the Lake Champlain phosphorus reduction goals in an annual report to the Vermont Legislature, dated January 2012.

- d) Does this report required by section 319(h)(11) cover progress made over the previous fiscal year (i.e., not two or more years ago)?

Yes, progress reports for P&C activities and Lake Champlain implementation cover the preceding year.

2. Section 319(h)(11) requires each State to report on an annual basis reductions in NPS pollutant loading and improvements in water quality.

- a) Considering projects and activities from all open grants as applicable, has the State reported improvements in water quality resulting from implementation of its NPS management program and/or previous years' 319(h) grant work plans? Using best professional judgment, did the State report on incremental water quality improvements for NPS-impaired waterbodies or watersheds (e.g., improvements that have not yet led to attainment of water quality standards)?

Vermont reported both full (restored to meet WQS) and incremental water quality improvements. Vermont reports water quality restorations through its Integrated List reporting and Section 319 NPS success stories (three were approved by EPA in FY11). An incremental improvement was reported in an SP-12 watershed success story posted on EPA's Science Connector website in December 2011, and some additional modest incremental improvements were reported for certain Lake Champlain tributaries (in the TMDL implementation report).

b) Did the State meet its annual commitment/target/goal (if any) under WQ-10?

Not applicable (no specific WQ-10 commitment was specified at the state level), but Vermont helped the Region meet Regional WQ-10 commitments by contributing 3 of the 5 success stories generated within the Region.

c) If applicable, did the State meet its annual commitment/target/goal under WQ-SP12 for NPS-impaired watersheds?

Not applicable, but Vermont helped the Region meet Regional commitments by contributing the one SP12 write-up that the Region committed to for FY11.

d) To the extent that information is available, did the State achieve and report load reductions for pollutants beyond sediment and nutrients (e.g., bacteria) pursuant to implementation of TMDLs and watershed plans? [Per 319(h)(11), this applies to the state's NPS management program, not just the 319-funded portion.] Briefly explain.

Vermont did not provide any information on load reductions beyond that required through the GRTS reporting process.

GRTS Reporting

For this section, it is sufficient to report on the results of previously conducted post-award grants monitoring. No additional monitoring may be needed.

1. To ensure that the State meets the reporting requirements in section 319(h)(11), did the State enter all mandated data elements into GRTS (including geolocational tags where available) for all projects in the previous 319 grant award on time? Please also specify what length of time the Region allows for this. [The national requirement is "within 90 days of grant award"; the Regional requirement may be shorter.]

Vermont entered the mandated data elements for FY11 projects on time, which in Region 1 is February 15 of each year. Note that the Region is proposing to revise this due date for FY13 projects to ensure consistency with the national requirement. Vermont currently meets the national requirement since it enters available project and grant information prior to the final award of its PPG.

2. For all active projects that have nonpoint source reduction goals for nutrients or sediment, is the State reporting load reductions (WQ-9) into GRTS after the first year of project implementation? Did the State report them by the February 15 deadline for the previous fiscal year? (i.e., Were load reductions reported for all projects implementing BMPs in FY2010 entered by Feb 15, 2011?)

Vermont reported load reduction data for some, but not all applicable NPS projects by the February 15 deadline. Data for approximately 5 projects was not entered. While this is of significant concern to the Region, this failure was due to unusual circumstances this year: Tropical Storm Irene destroyed Vermont DEC offices in the fall of 2011, and the NPS coordinator was not able to access certain records needed to report load reductions for these projects. The records do still exist, but access to them is difficult and was not feasible within the timeframe needed to meet the February 15 deadline. EPA intends to work closely with VTDEC to ensure that these data are entered as part of the FY12 GRTS reporting.

Implementing Priority Watershed-Based Plans

1. Is the State implementing nine-element watershed-based plans with at least 80% of its incremental funds in accordance with EPA's guidelines for CWA 319(h) grants? If this was determined during the Region's reviews of the State's active grant workplans, it is sufficient to document the results of these previous findings.

This is an area that needs improvement. For FY12, Vermont requested and was granted a waiver from this provision of the guidelines. The waiver was granted because Region 1 determined that failure to grant the waiver would reduce the program's environmental benefit and would cause significant disruption to the state's ability to implement the NPS Program.

Moving forward, EPA is concerned that Vermont does not have many watershed-based plans as defined in the guidelines. There is an opportunity to address this issue as Vermont has recently initiated a new surface water management strategy that is well positioned to generate plans consistent with the guidelines through the "tactical planning" component of the strategy. In addition, EPA intends to work closely with VTDEC as the state develops watershed implementation plans for each tributary watershed to Lake Champlain in conjunction with the revised Lake Champlain Phosphorus TMDL currently being prepared by EPA.

2. Are plans being implemented for the highest priority NPS-impaired watersheds consistent with EPA's guidelines for CWA 319(h) grants (e.g., those with completed TMDLs, those where other state, federal or local agencies are also contributing funding) or in special circumstances for protection of high priority watersheds that are not yet impaired?

Vermont has established a list of priority watersheds for NPS implementation, and in FY11 VTDEC used this list to help guide 319 funding decisions through the RFP process.

Ensuring Fiscal Accountability

For this section, it is sufficient to briefly report on the results of previously conducted grants management and oversight required of all project officers.

1. *Tracking and Reporting.* For all active 319(h) grants using existing post-award monitoring or best professional judgment:
 - a) Does the State have adequate tracking and fiscal reporting practices in place for financial accountability?

Yes, all recipients of federal assistance grants that expend more than \$500,000 in federal funds in a fiscal year are required to complete an annual audit of their financial management systems. All State Performance Partnership Grants (PPGs) in EPA New England meet the \$500,000 financial threshold and complete an annual audit. These annual audits identify any problems with the recipient's accounting systems and practices, as well as identifying any questionable expenditures and ensuring adequate tracking and fiscal reporting practices.

- b) Is State's RFP process efficient and timely for selecting and funding projects within work plan timeframe?

Vermont's process for reviewing and selecting projects has been efficient, with regular RFPs to solicit projects responsive to documented NPS problems. However, modest delays have occurred at the beginning of the solicitation process. In the past, Vermont has been reluctant to issue RFPs until Section 319 funding was received, which is occurring later and later in the federal fiscal year. To address this issue, the Region has urged Vermont to solicit projects prior to their funding year (or at least several months prior to receipt of grant funds) to ensure that projects are ready to proceed when funding becomes available. VTDEC (including the business office, which historically objected) appears willing to make this change.

- c) Did the State obligate all 319(h) funds within one year per current 319 grant guidelines?

Vermont's workplan and P&C commitments identify how the state expects to use its 319 funding, but as with many other New England states, the funding is awarded via a Performance Partnership Grant (PPG). Currently no systems are in place to track state obligation of 319 funds under PPGs, which combine multiple lines of accounting codes covering multiple years. Once combined in a PPG, the funds are not tied to the individual programs. PPG funds can be used for any activity that is eligible under at least one of the combined grants. Recipients do not need to account for Performance Partnership Grant funds in accordance with the funds' original environmental program sources; they need only account for total Performance Partnership Grant expenditures. However, based on personal familiarity with the State's sub-award schedule, it is clear that Vermont did obligate all 319 funds within a year of receiving the grant award.

2. *Rate of Expenditures.* Examine a summary of expenditures for all open 319 grant awards listing the following: State; grant #; FY; project period; grant award amount; balance (unliquidated obligation); percent unliquidated obligation. See example below for California, which was pulled from Compass (EPA's financial data warehouse). This information could also be pulled from other EPA tools such as GRTS or the Post Award Baseline Tracking Tool. Include a State total of grant award amount, balance and percent unliquidated obligation. Please reference the source and date of information used to answer the question below.
 - a) Relying on best professional judgment or empirical evidence as may be available, do the figures in the Rate of Expenditures chart substantially match the expected drawdown rates from the associated grant work plan schedules? If not, briefly explain.

In this case, it's not possible to use COMPASS data to accurately identify Section 319 rates of expenditure. As noted above, PPG's combine multiple lines of accounting codes that cover multiple years. Once combined in a PPG, the funds are not tied to the individual programs. PPG funds can be used for any activity that is eligible under at least one of the combined grants. Recipients do not need to account for PPG funds in accordance with the funds' original environmental program sources; they need only account for total Performance Partnership Grant expenditures. In addition, drawdown practices for PPG funds vary by state, and are done on a percentage basis across PRCs which may not necessarily reflect specific progress in an individual PRC. Nevertheless, Vermont's overall PPG unliquidated obligation percentage as of August, 2012 is very low (less than 5%), which suggests that the Section 319 unliquidated obligation percentage is also very low.

Considering PPG Priorities and Commitments

1. If a State puts part or all of its 319 grant funding in a PPG, using best professional judgment, has the state adequately documented progress consistent with its Priorities and Commitments?

Yes, Vermont submitted an annual PPG report documenting progress meeting the NPS Priorities and Commitments.

Identifying and Addressing Performance Issues/Progress Concerns

- 1) Briefly describe any significant outstanding 319 grant performance issues or progress concerns, including if any corrective actions are underway.

While Vermont has demonstrated good success with respect to some key NPS program indicators such as restorations of impaired waters, the Region has identified three areas of concern. First, the state's GRTS reporting (particularly with respect to load reductions) has been incomplete. While there were understandable reasons for this in FY11, the Region is working with the state to correct this problem moving forward. Second, the state has been slow to develop watershed-based plans fully consistent with the national NPS guidelines. As noted above, the Region sees good opportunities to address this issue as the state implements the new Vermont surface water strategy and begins to develop Lake Champlain sub-basin implementation plans in conjunction with the new Lake Champlain TMDL. Thirdly, the state has traditionally directed a large percentage of its 319 funds to staffing needs, and left relatively little for third party on-the-ground implementation projects. As a result of national 319 budget cuts in each of the last two years, in FY12 Vermont requested and was granted a waiver from the provision of the guidelines requiring that 80% of incremental funds be spent on implementation of watershed-based plans. The waiver was granted because the Region determined that failure to grant the waiver would reduce the program's environmental benefit and would cause significant disruption to the state's ability to implement the NPS program due to the combined effect of the national 319 budget reductions for FY11 and FY12. The waiver allowed Vermont to use 319 funds to continue to support a number of staff positions within VTDEC and the VT Agency of Agriculture that help implement approximately \$4 million of NPS BMP implementation projects funded with separate state appropriations (the Ecosystem Restoration Program and the Agricultural BMP cost-share program). While the leveraging of these other excellent implementation programs is commendable, the Region is very concerned with this trend and plans to work with the state to ensure that VTDEC is able to once again set aside a substantial portion of 319 funds for high priority implementation projects beginning with FY13.